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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,180	05/24/2001	Maurice Eduardus Theodorus van Esbroeck	V0028/258606	4606

23370 7590 02/13/2007
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EXAMINER

EDWARDS, LAURA ESTELLE

ART UNIT	PAPER NUMBER
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1734

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/865,180

Applicant(s)

THEODORUS VAN ESBROECK ET AL.

Examiner

Laura Edwards

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-34, 61-65, 67 and 69-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-34, 61-65, 67 and 69-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 30, 61, 67, 69, 70, and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dew (US 4,196,221) in view of Ludwig (US 5,449,524) and Snowden (US 3,631,563).

Dew teaches an apparatus for treating meat products comprising a conveyor device having meat product holders which are displaceable along a track to convey the meat products; at least one aqueous based flavoring application or marinade station located adjacent the conveyor device, each meat product sequentially passed by the application station, and the application station comprising at least one nozzle for supplying the aqueous based flavoring under pressure so as to be jetted onto the outer surface of the meat product (Fig. 1; col. 5, lines 47-56). Dew is silent concerning 1) processing the meat so as to provide a different marinade via at least one application station and 2) using at least one nozzle to provide at least one overlapping layer of marinade on the meat. However, it was known in the art, at the time the invention was made, to provide plural marinade application stations to treat a conveyed meat product with one marinade station providing a different marinade than the other stations as evidenced by Ludwig (see col. 3, lines 45-49 and col. 4, lines 8-10). It would have been obvious to one of ordinary skill in the art to provide plural marinade application stations with at least one different marinade from the rest of the stations as taught by Ludwig, in the Dew apparatus in order to provide a more flavorful meat product due the incorporation of plural flavoring treatments to a single meat product. In addition, it was known in the art, at the time the invention was made, to provide in a meat or

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poultry processing apparatus, the use of at least one oscillating nozzle to provide uniform overlapping sprays of fluid to conveyed meat (i.e., poultry) as evidenced by Snowden (See Fig. 17; col. 11, lines 6-10). It would have been obvious to one of ordinary skill in the art to provide at least one oscillating nozzle, as taught by Snowden, in the apparatus as defined by the combination above, in order to evenly or uniformly coat the outer surface of conveyed meat with overlapping sprays of marinade.

With respect to the use of some nozzles for different marinades, Ludwig recognizes that the different marinades can be applied to different portions of a given meat product for providing a greater oil or fat content to one part (breast) of the meat as oppose to another part (leg) as evidenced by col. 3, lines 45-49 such that it would be within the purview of one skilled in the art to utilize some nozzles in the apparatus, as defined by the combination above, with different marinades to coat at least a selected portion of the outer surface of the meat product.

With respect to the conveyor providing the meat product in different orientations or positions relative to the application nozzles, see Dew, col. 5, lines 9-22.

Claims 31-33 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dew (US 4,196,221), Ludwig (US 5,449,524), and Snowden (US 3,631,563) as applied to claim 30 above, and further in view of Muschany (US 4,627,007).

The teachings of Dew, Ludwig, and Snowden have been mentioned above but none teach or suggest detection means for observing a parameter of the meat product prior to application of the marinade. However, it was known in the art, at the time the invention was made, to provide a detection means to observe the shape and/or anatomy of the meat product via use of a

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photosensor or camera unit to facilitate determination of the proper amount of flavoring additive to apply to the meat product as evidenced by Muschany (see col. 5, lines 9-15 and lines 25-32).

It would have been obvious to one of ordinary skill in the art to provide a detection means as taught by Muschany in the apparatus as defined by the combination above in order to enable the observation of the shape and/or anatomy of the meat product to determine the proper amount of flavoring additive or marinade to apply to the meat product.

With respect to the use of a weigher, neither Dew, Ludwig, nor Snowden recognize the use of a weigher, however, Muschany recognizes the use of the weigher in conjunction with the detection means to facilitate determination of the proper amount of flavoring additive to apply to the meat product (see Muschany col. 5, lines 25-39). It would have been obvious to one of ordinary skill in the art to provide a weigher in combination with the detection means in the apparatus as defined by the combination above in order to determine the proper amount of flavoring additive or marinade to apply to the meat product.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dew (US 4,196,221), Ludwig (US 5,449,524), and Snowden (US 3,631,563) as applied to claim 30 above, and further in view of Evans et al (US 6,010,726).

The teachings of Dew, Ludwig, and Snowden have been mentioned above but none teach or suggest an adhesive applying means for applying adhesive to selected portions of the meat product prior to the marinade application. However, it was known in the art, at the time the invention was made, to utilize a resistivity modification composition (i.e., adhesive composition), via an atomizing sprayer system, on an edible food product to facilitate the

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adherence of solid or liquid flavorings onto a desired surface of the food product as evidenced by Evans et al (see col. 3, lines 45 to col. 4 line 44; col. 10, lines 19-59). It would have been obvious to one of ordinary skill in the art to provide an atomized spray adhesive applying means as taught by Evans et al in the apparatus as defined by the combination above in order to treat the meat product first with adhesive composition to ensure adherence of the later applied marinades to the selected surface of the meat product.

Claims 63 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dew (US 4,196,221), Ludwig (US 5,449,524), and Snowden (US 3,631,563) as applied to claim 30 above, and further in view of Vincent et al (GB 2,177,585).

The teachings of Dew, Ludwig, and Snowden have been mentioned above but none teach or suggest the use of shielding means to shield selected portions of the meat product from being sprayed with marinade. However, it was known in the art, at the time the invention was made to utilize shielding means to shield selected portions of a food product from being sprayed with a liquid coating material as evidenced by Vincent et al (see pg. 3, lines 22-36). As noted from the pg. 3 cite, Vincent et al utilize the shielding means to provide a pattern, lettering, figuring, or pictures on the food product such that it would have been obvious to one of ordinary skill in the art to provide shielding means in the apparatus as defined by the combination above in order to enable selected portions of the meat product to be shielded from marinade sprayed thereon to effect a pattern, lettering, figuring, or pictures on the meat product.

With respect to the use of at least one application station including means for generating gas flow with particles entrained in the gas flow, neither Dew, Ludwig, nor Snowden recognize a

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dry marinade application station whereby seasoning/flavoring in particulate form is sprayed under pressure onto to the meat product. However, Vincent et al recognize pressurized spraying of seasoning/flavoring in powder form onto the food product (see pg. 2, lines 86-100 and pg. 3, lines 1-7). In light of the teachings of Vincent et al, it would have been obvious to one of ordinary skill in the art to provide at least one dry marinade application station including means for generating gas flow with flavored particles entrained in the gas flow in the apparatus as defined by the combination above as an alternative dry marinade application system.

Claims 64 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dew (US 4,196,221), Ludwig (US 5,449,524), and Snowden (US 3,631,563) as applied to claim 30 above, and further in view of Newman (US 5,668,634) or Gorl (US 4,413,279).

Dew, Ludwig, and Snowden provide an apparatus for treating meat products as set forth above but none teach or suggest the use of analyzing means in the form of a camera to inspect the quality of the final meat product. However, it was known in the art, at the time the invention was made to utilize analyzing means in the form of a camera to establish the quality of a processed meat product as evidenced by either Newman or Gorl (see abstracts). In light of the teachings of either Newman or Gorl, it would have been obvious to one of ordinary skill in the art to provide analyzing means in the form of a camera to determine the final quality of the processed meat products so as to determine whether further processing was required.

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Claims 71 and 74-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dew (US 4,196,221), Ludwig (US 5,449,524), and Snowden (US 3,631,563) as applied to claim 30 above, and further in view of Janssen et al (WO 93/13671).

Dew, Ludwig, and Snowden provide an apparatus for treating meat products as set forth above but fail to explicitly teach rotary meat product holders. However, it was known in the art at the time the invention was made, to utilize rotary meat product holders in conjunction with the meat conveyor device so as to enable processing and inspection of all surfaces of the meat product as evidenced by Janssen et al (see pg. 10, lines 11-23). It would have been obvious to one of ordinary skill in the art to provide rotary meat product holders as taught by Janssen et al in conjunction with the meat conveyor device of the apparatus defined by the combination above in order to enable processing and inspection of all surfaces of the meat product.

Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dew (US 4,196,221) in view of Ludwig (US 5,449,524) and Janssen et al (WO 93/13671).

Dew teaches an apparatus for treating meat products comprising a conveyor device having meat product holders which are displaceable along a track to convey the meat products; at least one aqueous based flavoring application or marinade station located adjacent the conveyor device, each meat product sequentially passed by the application station, and the application station comprising at least one nozzle for supplying the aqueous based flavoring under pressure so as to be jetted onto the outer surface of the meat product (See Fig. 1; col. 5, lines 47-56). Dew is silent concerning 1) plural application stations wherein at least one application station provides a different marinade than the other stations and 2) the meat product holders comprising a rotary

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member for rotating the meat product about a vertical axis. However, it was known in the art, at the time the invention was made, to provide plural marinade application stations to treat a conveyed meat product with one marinade station providing a different marinade than the other stations as evidenced by Ludwig (see col. 3, lines 45-49 and col. 4, lines 8-10). It would have been obvious to one of ordinary skill in the art to provide plural marinade application stations with at least one different marinade from the rest of the stations as taught by Ludwig, in the Dew apparatus in order to provide a more flavorful meat product due the incorporation of plural flavoring treatments to a single meat product. Also, it was known in the art at the time the invention was made, to utilize rotary meat product holders in conjunction with the meat conveyor device so as to enable processing and inspection of all surfaces of the meat product as evidenced by Janssen et al (see pg. 10, lines 11-23). It would have been obvious to one of ordinary skill in the art to provide rotary meat product holders as taught by Janssen et al in conjunction with the meat conveyor device of the apparatus defined by the combination above in order to enable processing and inspection of all surfaces of the meat product when desired.

Claim 78 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dew (US 4,196,221) in view of Ludwig (US 5,449,524) and Janssen et al (WO 93/13671) as applied to claim 77 above, and further in view of Vincent et al (GB 2,177,585).

The teachings of Dew, Ludwig, and Janssen et al have been mentioned above but none teach or suggest at least one application station including means for generating gas flow with particles entrained in the gas flow so as to provide a dry marinade application station whereby seasoning/flavoring in particulate form is sprayed under pressure onto to the meat product.

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However, Vincent et al recognize pressurized spraying of seasoning/flavoring in powder form onto the food product (see pg. 2, lines 86-100 and pg. 3, lines 1-7). In light of the teachings of Vincent et al, it would have been obvious to one of ordinary skill in the art to provide at least one dry marinade application station including means for generating gas flow with flavored particles entrained in the gas flow in the apparatus as defined by the combination above as an alternative dry marinade application system.

Claims 79 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dew (US 4,196,221) in view of Ludwig (US 5,449,524), Evans et al (US 6,010,726), and Janssen et al (WO 93/13671).

Dew teaches an apparatus for treating meat products comprising a conveyor device having meat product holders which are displaceable along a track to convey the meat products; at least one aqueous based flavoring additive application or marinade station located adjacent the conveyor device, each meat product sequentially passed by the application station, and the application station comprising at least one nozzle for supplying the aqueous based flavoring under pressure so as to be jetted onto the outer surface of the meat product. Dew is silent concerning 1) plural application stations wherein each application station provides a different marinade, 2) an adhesive application station prior to the additive application stations, and 3) the meat product holders comprising a rotary member for rotating the meat product about a vertical axis. However, it was known in the art, at the time the invention was made, to provide different marinade application stations to sequentially treat a conveyed meat product as evidenced by Ludwig (see col. 3, lines 45-49 and col. 4, lines 8-10). It would have been obvious to one of

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ordinary skill in the art to provide different marinade application stations as taught by Ludwig, in the Dew apparatus in order to provide a more flavorful meat product due the incorporation of plural flavoring treatments to a single meat product. Secondly, it was known in the art, at the time the invention was made, to utilize a resistivity modification composition (i.e., adhesive composition), via an atomizing sprayer system, on an edible food product to facilitate the adherence of solid or liquid flavorings onto a desired surface of the food product as evidenced by Evans et al (see col. 3, lines 45 to col. 4 line 44; col. 10, lines 19-59). It would have been obvious to one of ordinary skill in the art to provide an atomized spray adhesive applying means as taught by Evans et al in the apparatus as defined by the combination above in order to treat the meat product first with adhesive composition to ensure adherence of the later applied marinades to the selected surface of the meat product. Thirdly, it was known in the art at the time the invention was made, to utilize rotary meat product holders in conjunction with the meat conveyor device so as to enable processing and inspection of all surfaces of the meat product as evidenced by Janssen et al (see pg. 10, lines 11-23). It would have been obvious to one of ordinary skill in the art to provide rotary meat product holders as taught by Janssen et al in conjunction with the meat conveyor device of the apparatus defined by the combination above in order to enable processing and inspection of all surfaces of the meat product. Finally, it would have been obvious to one of ordinary skill in the art to provide rotary meat product holders as taught by Janssen et al in conjunction with the meat conveyor device of the apparatus defined by the combination above in order to enable processing and inspection of all surfaces of the meat product when desired.

Response to Arguments

Applicants' arguments filed 6/6/06 have been fully considered but they are not persuasive.

Applicants contend that there is motivation for the combination of Dew in view of Ludwig because one of ordinary skill in the art would not have found it obvious to combine Dew's system applying a water based spray to chicken with that of Ludwig, to provide injecting identical or different solutions into different portions of the chicken, without using improper hindsight. This argument is well taken. However common sense would lead one to provide an apparatus as claimed to provide for a more flavorful meat product. The claimed invention would remain obvious in light of the teachings of Dew taken with Ludwig and Snowden because Dew teaches a substantial amount of the claimed structure. Ludwig teaches how the routineer would process the chicken and Snowden teaches further structure to oscillating nozzles for uniform spray. No structure of Ludwig has been applied in the rejection. Snowden provides further evidence of the use of oscillating spray nozzles to apply fluid to chicken to cause overlapping sprays and even/uniform treatment of the surface of the chicken. Together, the combined teachings of Dew, with the known use of processing chicken with different marinades by Ludwig, and the use of at least one oscillating nozzle, explicitly taught by Snowden, to effect oversprays to thereby provide uniform treatment of the surface of the chicken effects the conclusion of obviousness with respect to the claimed invention. In response to Applicants' argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only

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knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443.F.2d 1392; 170 USPQ 209 (CCPA 1971).

Applicants' arguments with respect to claims depending from claim 1 with respect to the use of overlapping sprays are deemed moot in light of the teachings of Snowden (Fig. 17; col. 11, lines 6-10).

Applicants contend that neither Dew, Ludwig, nor Janssen (including prior art to Vincent and Evans), teach or suggest multiple coatings of marinade on desired portion(s) of the meat while the meat is rotating. This argument is not deemed persuasive because Applicants seek to invoke novelty based upon how the meat is processed. The apparatus as defined by the combination above provides the means or structure for marinating the meat while the meat is rotated. As for the plural coatings on the meat, upon rotating the meat for a predetermined period of time, the routineer in the art would effect plural coatings of the meat.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

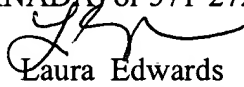
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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura Edwards whose telephone number is (571) 272-1227. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Laura Edwards
Primary Examiner
Art Unit 1734

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February 9, 2007